

STATE OF CALIFORNIA

Energy Resources Conservation
and Development Commission

04-AFC-1
CALIF ENERGY COMMISSION

JAN 11 2005

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In the Matter of
Application for Certification of the)
San Francisco Electric Reliability Project) Docket No. 04-AFC-1
(SFERP))
_____)

**APPLICANT'S RESPONSE TO THE MOTION TO TERMINATE
PROCEEDING OF CALIFORNIANS FOR RENEWABLE ENERGY, INC.**

January 11, 2005

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**APPLICANT'S RESPONSE TO THE MOTION TO TERMINATE
PROCEEDING OF CALIFORNIANS FOR RENEWABLE ENERGY, INC.**

Pursuant to Rule 1716.5 of the California Energy Commission's (CEC or Commission) Rules of Practice and Procedure, the City and County of San Francisco (City or Applicant) submits the following response to the Motion to Terminate Proceeding of Californians for Renewable Energy, Inc. (CARE) filed on December 28, 2004 (CARE's motion). CARE's motion asks the Commission to terminate the proceeding on the grounds that, according to CARE, 1) the Application for Certification (AFC) is no longer complete; 2) the California Department of Water Resources (DWR) could seek to terminate the Power Purchase Agreement between the City and the DWR (the PPA); and 3) the City has made "charges for the sum of two DWR escrow payments . . . for storage charges for the four turbine generators . . ." The City respectfully opposes CARE's motion and requests the CEC to deny it.

Although the City has requested that the schedule for the proceeding be placed on hold while the City evaluates an alternative site, the City is proceeding diligently with development and permitting of the San Francisco Electric Reliability Project (SFERP). To date the stay in the schedule has been in place no more than two months and the City expects to submit additional information during the first quarter of 2005. The City has

kept DWR apprised of its progress and the PPA remains in effect. Moreover, pending commencement of construction, the City must store the turbines safely pursuant to the Implementation Agreement. Construction of the SFERP remains an important component of the City's efforts to close down older, polluting in-City generation while maintaining reliability. Accordingly, CARE's motion should be denied.

I. The City's AFC is Not Deficient.

CARE contends that the proceeding should be terminated because "[w]ithout a specific site for the CCSF project, the AFC is no longer complete." The Commission determined that the City's AFC was data adequate, and hence complete, on April 21, 2004. On November 10, 2004, the City filed a letter requesting that the Commission place the schedule for the proceeding on hold while the City evaluates an alternative site. The City is proceeding expeditiously with this evaluation. As soon as the evaluation is completed and any necessary additional information is developed, the City intends to file with the CEC any additional information required to proceed with its preferred site. Thus, it would be premature to terminate the proceedings at this time.

The City notes that the CEC's Rules provide that parties may move for termination of a proceeding only "based on applicant's failure to pursue an application or notice with due diligence." See Rule 1720.2. In this case, the City is diligently exploring an alternative and will expeditiously file any necessary additional information. Accordingly, the City is pursuing its application with due diligence.

The City notes further that the CEC recently denied the City's motion to dismiss the application filed by Mirant for the Potrero Unit 7 facility after a year long suspension. See Order Continuing Suspension of Proceedings, Docket 00-AFC-4 (December 3,

2004). The City's motion to dismiss was denied even though Mirant is currently in bankruptcy proceedings, many of the facts of the application have changed substantially, and the case had been pending before the CEC for four years. See, Intervenor City and County of San Francisco Opposition to Request to Continue Suspension and Request to Terminate Proceedings, Docket 00-AFC-4 (November 29, 2004). In contrast, this proceeding is less than a year old and the schedule has been stayed for a mere two months.

II. The PPA Remains in Effect.

CARE also argues that this proceeding should be terminated because CARE contends that DWR could seek to terminate the PPA, and because the PPA is subject to automatic termination under a number of circumstances unrelated to a change in site. However, the PPA remains in effect. Further, even if the PPA were terminated, this fact alone would not provide a basis for termination of the proceeding. Pursuant to Rule 1720.2, this fact would only be relevant to termination of this proceeding if the City, as a result, ceased to diligently pursue its application. As explained above, the City is diligently pursuing project development and its application.

The City has kept DWR apprised of its progress in all aspects of project development throughout the term of the project including during the recent period when the CEC proceedings have been stayed. On May 6, 2004, the City was informed by DWR that it "is not taking any action on the Site Control Milestone at this time, but reserves all rights while it monitors the situation." DWR has continued to impress upon the City the importance of prompt action to develop the SFERP. The City is proceeding

as promptly as possible and remains in regular communication with DWR to apprise it of the City's progress. To date, DWR has not sought to terminate the PPA.

Further, CARE is incorrect in suggesting that a change of site will result in automatic termination of the PPA. The automatic termination provisions in the PPA are all related to the respective rights and obligations of the parties at the time of financing. They are not currently operative. CARE suggests that the PPA will terminate automatically on the grounds that the "Final Terms" must change if there is a site change. The PPA defines Final Terms as "the principal amount(s), interest rate(s), redemption provisions and premiums and other terms and provisions of the Initial Bonds which shall be set forth in the Bond Purchase Agreement". Thus, the Final Terms are not affected by a site change at this stage of the proceedings.

III. The City's Expenditures are Legitimate Development Costs.

CARE also offers as a rationale for terminating the proceeding a claim that the City is improperly spending escrow money in pursuit of project development and for storage of the combustion turbines. The City is fully cognizant of the need to be prudent with the funds made available for development of the SFERP and to minimize the cost of development to ratepayers (many of whom are San Francisco residents). Nonetheless, pursuant to the Implementation Agreement, the manner in which the City expends the developments funds is a matter between the City, the Attorney General, California Consumer Power and Conservation Financing Authority (or its successor in interest) and DWR. Furthermore, as delineated above, the City is proceeding with development of the SFERP, subject to all necessary approvals by the CEC and City bodies with jurisdiction.

Accordingly, continued development expenditures are appropriate and necessary for the City to diligently pursue development and its application.

Moreover, pending construction, the City has an obligation under the Implementation Agreement to "arrange for the storage of the [generating units] in a manner that preserves their value and utility in accordance with manufacturer warranty requirements until such Assets are either incorporated into the Facility or sold in accordance with the provisions of this Agreement." Implementation Agreement at 3.04. The City has evaluated storage alternatives to meet this requirement periodically and concluded that the current storage approach is best in light of the current schedule.


IV. Conclusion.

The CARE motion fails to articulate a basis to terminate this proceeding and should be denied.

Respectfully submitted,

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Energy Resources Conservation
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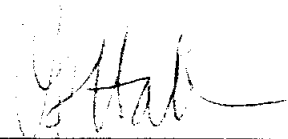
Application for Certification for the)
SAN FRANCISCO ELECTRIC RELIABILITY)
PROJECT (SFERP))
_____))
)

Docket No. 04-AFC-1

PROOF OF SERVICE

I, Arlene Hall, declare that on January 11, 2005, I deposited copies of the attached
APPLICANT'S RESPONSE TO THE MOTION TO TERMINATE PROCEEDING OF
CALIFORNIANS FOR RENEWABLE ENERGY, INC. in the United States mail in San
Francisco, California, with first-class postage thereon fully prepaid and addressed to all parties
on the attached service list.

I declare under the penalty of perjury that the foregoing is true and correct.



Arlene Hall

SERVICE LIST

04-AFC-1

DOCKET UNIT

Send the original signed document plus 12 copies to the following address:

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 01-AFC-17
DOCKET UNIT, MS-4
1516 Ninth Street
Sacramento, CA 95814-5512

In addition to the documents sent to the Commission Docket Unit, also send individual copies of all documents to:

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